

FORM 104 (10/06)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFF Janice G. Marsh, Trustee Janice G. Marsh, LLC 446 Main Street, 19 th Floor Worcester, MA 01608 Telephone 508-797-5500 <u>janicemarsh1@gmail.com</u>	DEFENDANT John W. Tracy
ATTORNEY (Firm Name, Address and Telephone No.) Janice G. Marsh Janice G. Marsh, LLC 446 Main Street, 19 th Floor Worcester, MA 01608 Telephone 508-797-5500 <u>janicemarsh1@gmail.com</u>	ATTORNEYS (If Known)
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> US Trustee <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input checked="" type="checkbox"/> Trustee	PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> US Trustee <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Avoidance of fraudulent transfers	
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause of action as 2, second alternative cause of action as 3, etc.)	
FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11 – Recovery of money/property - § 542 turnover of property <input type="checkbox"/> 12 – Recovery of money/property - § 547 preference <input type="checkbox"/> 13 – Recovery of money/property - § 548 fraudulent transfer <input type="checkbox"/> 14 – Recovery of money/property – other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21 – Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31 – Approval of sale of property of estate and of a co-owner - § 363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41 – Objection/revocation of discharge - § 727(c), (d), (e)	<input type="checkbox"/> 67 – Dischargeability - § 523(a)(4), fraud as fiduciary, embezzlement, larceny <input type="checkbox"/> 61 – Dischargeability - § 523(a)(5), domestic support <input type="checkbox"/> 68 – Dischargeability - § 523(a)(6), willful and malicious injury <input type="checkbox"/> 63 – Dischargeability - § 523(a)(8), student loan <input type="checkbox"/> 64 – Dischargeability - § 523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65 – Dischargeability – other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71 – Injunctive relief – reinstatement of stay <input type="checkbox"/> 72 – Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81 – Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91 – Declaratory judgment

FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51 – Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66 – Dischargeability - § 523(a)(1), (14), (14A), priority tax claims <input type="checkbox"/> 62 – Dischargeability - § 523(a)(2), false pretenses, false representation, actual fraud		FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01 – Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. § 78aaa <i>et seq.</i> <input type="checkbox"/> 02 – Other (e.g., other actions that would have been brought in state court if unrelated to bankruptcy case)	
<input type="checkbox"/> Check if this case involves a substantive issue of state law		<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input type="checkbox"/> Check if a jury trial is demanded in complaint		Demand \$36,000.00	
Other Relief Sought			
BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES			
NAME OF DEBTOR J & J Developers, LLC		BANKRUPTCY CASE NO. 15-41387	
DISTRICT IN WHICH CASE IS PENDING Massachusetts	DIVISIONAL OFFICE Central	NAME OF JUDGE Christopher J. Panos	
RELATED ADVERSARY PROCEEDING (IF ANY)			
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.	
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISIONAL OFFICE	NAME OF JUDGE	
SIGNATURE OF ATTORNEY (OR PLAINTIFF)			
DATE July 19, 2017		PRINT NAME OF ATTORNEY (OR PLAINTIFF) /s/ Janice G. Marsh	

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In re: J & J Developers, LLC

Chapter 7, Case No. 15-41387-CJP

Janice G. Marsh, Trustee,
Plaintiff,

v.

Adv. Proc. No. 17-

John W. Tracy,
Defendant

COMPLAINT

1. The court has jurisdiction pursuant to 28 U.S.C. sections 157 and 1334.
2. The plaintiff and the defendant consent to entry of final orders or judgments by the bankruptcy judge in this proceeding.
3. Janice G. Marsh is the trustee and plaintiff of the above-captioned bankruptcy estate.
4. The defendant John W. Tracy is an individual who resides at 22 Joshua Lane, Epping, NH 03042.
5. On April 13, 2007, the debtor, J & J Developers, LLC, was organized in Massachusetts.
6. Upon informant and belief, the defendant and James N. Alden, Jr. organized the debtor, and they were the 50/50 managers and partners from the date of the organization of the debtor until the dissolution of the debtor.
7. On March 27, 2009, Lynne Black and Jose A. Nunes, wife and husband ("Black and Nunes"), filed a lawsuit in Essex Superior Court, case no. 0977CV00574, against the debtor for alleged breach of contract arising from a construction dispute.
8. On May 30, 2012, an arbitrator awarded Black and Nunes the sum of \$56,794.62 for damages, plus interest and costs, against the debtor.
9. The debtor made the following transfer, drawn on and paid from, the debtor's bank account at Beverly Cooperative Bank, ending 8204:
 - a. Check no. 2861, dated May 23, 2011, and paid on June 1, 2011, \$25,000.00 ("Transfer 1"); and
 - b. Check no. 3402, dated September 4, 2012, and paid on September 6, 2012, \$11,000.00 ("Transfer 2").

10. When the debtor made Transfer 1 and Transfer 2, the debtor owed at least one creditor.
11. On July 20, 2015, the debtor commenced this case.
12. At all relevant times, the defendant was an insider as that term is defined under 11 U.S.C. section 101(31).

Count 1

Avoidance and Recovery of Fraudulent Transfers
M.G.L. Chapter 109A and 11 U.S.C. Section 544

13. The trustee repeats and re-asserts the allegations contained in the preceding paragraphs and incorporates them by reference.
14. The debtor made Transfer 1 and Transfer 2 with actual intent to hinder, delay or defraud a creditor of the debtor. Mass. Gen. Laws ch. 109A § 5(a)(1).
15. The debtor made Transfer 1 and Transfer 2 without receiving a reasonably equivalent value in exchange for each transfer. Mass. Gen. Laws ch. 109A § 5(a)(2).
16. The debtor intended to incur, or believed or reasonably should have believed, that the debtor would incur debts beyond the debtor's ability to pay as they became due. Mass. Gen. Laws ch. 109A § 5(a)(2)(ii).
17. The debtor made Transfer 1 and Transfer 2 without receiving a reasonably equivalent value in exchange for the transfers and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfers. Mass. Gen. Laws ch. 109A § 6(a).
18. The debtor made Transfer 1 and Transfer 2 to an insider for an antecedent debt, the debtor was insolvent at that time and the insider had reasonable cause to believe that the debtor was insolvent. Mass. Gen. Laws ch. 109A § 6(b).

WHEREFORE, Janice G. Marsh, the trustee and plaintiff, requests the court

- A. determine that Transfer 1 and Transfer 2 to or for the benefit of the defendant John W. Tracy were fraudulent;
- B. avoid both transfers;
- C. grant the trustee a judgment in the amount of at least \$36,000.00, plus interest, against the defendant so that she may recover the property or its value; and
- D. grant all other relief to which the trustee is entitled.

Count II

Avoidance and Recovery of Fraudulent Transfer

11 U.S.C. Section 548

19. The trustee repeats and re-asserts the allegations contained in the preceding paragraphs and incorporates them by reference.
20. The debtor made Transfer 2 on or within two years before the date of the filing of the petition. 11 U.S.C. § 548(a)(1).
21. The debtor made Transfer 2 with actual intent to hinder, delay or defraud any entity to which the debtor was or became, on or after the date that the transfer was made, indebted. 11 U.S.C. § 548(a)(1)(A).
22. The debtor received less than a reasonably equivalent value in exchange for Transfer 2. 11 U.S.C. § 548(a)(1)(B)(i).
23. The debtor was insolvent on the date that Transfer 2 was made, or became insolvent as a result of the transfer. 11 U.S.C. § 548(a)(1)(B)(ii)(I).
24. The debtor intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured. 11 U.S.C. § 548(a)(1)(B)(ii)(III).

WHEREFORE, Janice G. Marsh, the trustee and plaintiff, requests the court

- A. determine that Transfer 2 to or for the benefit of the defendant John W. Tracy was fraudulent;
- B. avoid the transfer;
- C. grant the trustee a judgment in the amount of at least \$11,000.00, plus interest, against the defendant so that she may recover the property or its value; and
- D. grant all other relief to which the trustee is entitled.

Respectfully Submitted,

/s/ Janice G. Marsh

Janice G. Marsh, Trustee

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